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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of		
LCI Petition for Declaratory Ruling Concerning Bell Operating Company Entry into In-Region Long Distance Markets	)	CC Docket No. 98-5

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Genevieve Morelli
Executive V.P. and General Counsel
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

202-296-6650

Robert J. Aamoth
Steven A. Augustino
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, D.C. 20036

202-955-9600

Its Attorneys

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SUMMARY

LCI's proposal is a bold approach to an increasingly frustrating problem. Two years after the historic Telecommunications Act of 1996, the BOC's local networks have not been opened to the degree necessary to promote broad-based competitive entry in local telecommunications markets. Due principally to the inherent conflict of interest LCI describes, BOCs have resisted true competition and instead have led the charge with seemingly endless legal, jurisdictional, constitutional and political attacks on the interconnection and unbundling provisions of the Act.

Clearly, *something* needs to be done to put local competition back on track. As described in the LCI's Petition, the Fast Track alternative appears to be one of several approaches that have the potential to restore the pace of local competition. By correctly identifying the central barriers to local competition and the BOC conflicts of interest that give rise to them, LCI's proposal takes a critical first step toward broad-based local competition (and, as a consequence, BOC in-region interLATA authorization).

At the same time, the proposal provides only an outline of a structural reform path. Many aspects of the proposal need further development, including the adoption of effective rules to implement the reforms. CompTel is concerned that these unresolved issues might threaten the proposal's effectiveness, and therefore recommends that the Commission work cooperatively with the industry to resolve these questions promptly.

Importantly, other paths remain, including strict adherence to Section 271's standards and procedures. Sections 251 and 271 will not be rendered moot even if LCI's plan is successfully implemented, because the BOCs will have the option of filing a Section 271 application without taking advantage of the Fast Track approach. The FCC therefore must

remain vigilant in its application of existing Section 271 standards and procedures. As the Commission has repeatedly made clear, the Act requires that local markets be fully and irreversibly open to all forms of competition and that BOC entry otherwise be in the public interest before a BOC is authorized to provide in-region interLATA services. The FCC must have the courage to say "no" to as many premature applications as the BOCs may choose to file. By standing firm, the Commission can allow Section 271 to serve the purpose Congress envisioned, albeit somewhat more slowly than many had hoped.

In short, CompTel believes that there are several paths to break the present stalemate on local competition. Ultimately, the key is to incent the BOCs to embrace competition and to fulfill their duties as wholesale suppliers (while also providing vigorous enforcement to ensure that these obligations are met). CompTel would welcome this embrace either in the context of the existing Section 271 procedures or the LCI Fast Track alternative. Regardless of which path is chosen, however, it is critical that the three principal barriers to competition described in the LCI Petition be removed *before* a BOC is granted authorization to provide in-region interLATA services.

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COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits the following comments in response to the Commission's *Public Notice* regarding the Petition for Expedited Declaratory Ruling filed by LCI International Telecom Corp. ("LCI Petition").[1]

I. INTRODUCTION

In its Petition, LCI requests several declaratory rulings intended to break the current stalemate in the development of local competition and consequently to clear the path for authorization of the Bell Operating Companies ("BOCs") to provide in-region interLATA services. LCI proposes a "Fast Track" plan under which a BOC may demonstrate presumptive compliance with the competitive checklist and public interest tests of Section 271 by voluntarily separating its retail and wholesale activities into separate subsidiaries. A BOC choosing to implement LCI's proposal would create a wholesale subsidiary ("NetCo"), which would provide network elements and services to all retail carriers on an arms-length, nondiscriminatory basis,

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[1] *See* Commission Seeks Comment on LCI Petition for Declaratory Ruling Concerning Bell Operating Company Entry into In-Region Long Distance Markets, DA 98-130 (rel. Jan. 26, 1998) *(Public Notice)*.

but would not (except for a transition period) provide any end-user services. In addition, a BOC would create a separate retail subsidiary ("ServeCo"), which would provide end-user local (and long distance) services, using wholesale facilities obtained at an arms-length basis from NetCo, as well as new facilities it may construct or acquire from others. LCI asserts that a BOC's inherent conflict of interest between the provision of retail and wholesale services will be broken if seven minimum and interrelated safeguards govern the NetCo/ServeCo structure:

1. NetCo and ServeCo do not share facilities, functions, services, employees or brand names;
2. NetCo does not engage in any retail marketing;
3. ServeCo deals with NetCo on an equal (not "separate but equal") basis with other CLECs;
4. ServeCo is substantially publicly-owned (approximately 40% or more);
5. ServeCo maintains a separate board of directors, composed in part of representatives of the non-BOC ownership interests;
6. ServeCo's management are compensated solely based on ServeCo's performance, not that of NetCo or the BOC; and
7. ServeCo does not provide stand-alone long distance services to NetCo local customers.

If a BOC chooses to adopt this structure (with all seven minimum safeguards), LCI proposes that the Commission (1) declare that ServeCo is not a "successor or assign" of the BOC for purposes of Section 251(h); (2) classify ServeCo as a non-dominant carrier and therefore subject it to the same level of regulation as other CLECs; and (3) establish a rebuttable presumption that the BOC has met the competitive checklist and public interest tests of Section

271. LCI stresses that election of the "Fast Track" approach is voluntary on behalf of the BOCs; if a BOC chooses not to separate its wholesale and resale activities as proposed, it may proceed under existing 271 procedures to satisfy the Act's requirements, without any of the time-saving presumptions or favorable post-entry regulatory treatment embodied in the Fast Track plan.

LCI's proposal is a bold approach to an increasingly frustrating problem. Two years after the historic Telecommunications Act of 1996, the BOC's local networks have not been opened to the degree necessary to promote broad-based competitive entry in local telecommunications markets. Due principally to the inherent conflict of interest LCI describes, BOCs have resisted true competition and instead have led the charge with seemingly endless legal, jurisdictional, constitutional and political attacks on the interconnection and unbundling provisions of the Act. Even the carrot of in-region interLATA authorization has failed, as the BOCs have filed multiple clearly deficient applications in a quest to chip away at Section 271's standards, wear down regulators and co-opt potential objectors.[2]

Clearly, *something* needs to be done to put local competition back on track. The current stalemate in the development of local competition denies consumers (particularly residential consumers) the benefits promised by the 1996 Act's landmark initiatives. As described in the LCI's Petition, the Fast Track alternative appears to be one of several

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[2] For example, until the FCC specifically prohibited the practice in the *Local Competition Order*, BOCs routinely demanded provisions in interconnection agreements attesting that the agreement satisfies the competitive checklist and 251(c) of the Act. *See Implementation of the Local Competition Provisions in the Telecommunications Act of* 1996, 11 FCC Rcd 15499, 15576 (*Local Competition Order*). More recently, there have been allegations that BellSouth attempted to unlawfully coerce one CLEC into supporting its South Carolina application. "Bliley Says BellSouth Is Trying to 'Misuse' FCC," Comm Daily, Mar. 11, 1998 at 1-2.

approaches that have the potential to restore the pace of local competition. By correctly identifying the central barriers to local competition and the BOC conflicts of interest that give rise to them, LCI's proposal takes a critical first step toward broad-based local competition (and, as a consequence, BOC in-region interLATA authorization).

At the same time, the proposal provides only an outline of a structural reform path. Many aspects of the proposal need further development, including the adoption of effective rules to implement the reforms. Although CompTel is concerned that these unresolved issues might threaten the proposal's effectiveness, CompTel agrees with the need for strict adherence to at least the seven minimum safeguards outlined in the Petition. A structural approach is worthwhile to the extent it eliminates the BOCs' conflict of interest, rather than merely masking it. For the above reasons, CompTel believes there is significant merit in further development of a Fast Track alternative along the lines LCI describes.

Sections 251 and 271 will not be rendered moot even if LCI's plan is successfully implemented, however, BOCs will remain subject to Section 251's interconnection, unbundling and resale provisions, and, under LCI's proposal, will have the option of filing a Section 271 application without taking advantage of the Fast Track approach. The FCC therefore must remain vigilant in its application of existing Section 271 standards and procedures. As the Commission has repeatedly made clear, the Act requires that local markets be fully and irreversibly open to all forms of competition and that BOC entry otherwise be in the public interest before a BOC is authorized to provide in-region interLATA services. If the FCC continues to stand firm in the Section 271 process, and has the courage to say "no" to as many

premature applications as the BOCs may choose to file, Section 271 as well can serve the purpose Congress envisioned, albeit somewhat more slowly than many had hoped.[3]

In short, CompTel believes that there are several paths to break the present stalemate on local competition. Ultimately, the key is to incent the BOCs to embrace competition and to fulfill their duties as wholesale suppliers, but to provide vigorous enforcement to ensure that these obligations are met. CompTel would welcome this embrace either in the context of the existing Section 271 procedures or the LCI Fast Track alternative. Regardless of which path is chosen, however, it is critical that the three principal barriers to competition described in the LCI Petition be removed *before* a BOC is granted authorization to provide in-region interLATA services.

II. TWO YEARS AFTER THE 1996 ACT, BROAD-BASED LOCAL ENTRY IS BEING SUPPRESSED BY THREE BARRIERS TO COMPETITION

Since its inception in 1981, CompTel has advocated policies to promote the development of full and fair competition in telecommunications services. In the 1980's, as the CPE and interexchange markets were being opened to competition, CompTel fought for policies that facilitated entry by innovative new providers and that enabled all providers, not just the incumbent, to share in the benefits developed during the legacy of the interexchange monopoly. As competition grew in these markets and spread to other markets, CompTel has continued to advocate policies to provide a level playing field for all telecommunications providers, recognizing in particular that small and mid-size carriers often are in the best position to bring

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[3] Apart from its incentive to promote local competition, Section 271 serves a vital function in protecting the interexchange market from harm by re-creation of the incentives that led to divestiture in the first place. For this reason as well, it is critical that the FCC insist on full compliance with Section 271's standards.

the benefits of competition to consumers that, whether for geographic, volume, social or other reasons, might not be attractive to other providers. Today, CompTel's membership includes over 200 companies, large and small, offering a full variety of competitive telecommunications and telecommunications-related services, including local, 1+ and dial around long distance, travel card, 800/888, pay-per-call, information, and internet services.

During the legislative debate that culminated in the 1996 Act, CompTel argued for provisions to build upon the overwhelming success of interexchange competition. In particular, CompTel advocated the expansion of competition to its next logical step – the local telecommunications market. CompTel argued that such competition would best be fostered under rules that provide opportunities for all carriers to participate through a variety of entry methods, as dictated by the entity's size and business strategy. If all carriers had these opportunities to compete, competition would be much more likely to take hold in all markets rapidly and efficiently, not just in urban business centers. That is why CompTel supported strong interconnection, unbundling and resale provisions in what became Section 251 of the Act. Moreover, as a fundamental prerequisite to the preservation of fair competition in interLATA services, CompTel supported provisions in Section 271 to require the BOCs to open their local markets fully *before* they receive authorization to provide in-region interLATA services. CompTel believed – and continues to believe – that, *if* the ILECs' obligations are fulfilled completely, the 1996 Act will lay the groundwork for entities to compete for all local telecommunications customers, from multiline business subscribers in urban areas to residential customers, to everyone in between.

Two years after passage of the 1996 Act, however, these promises are largely unfulfilled. The development of local competition is stalled, due to the BOCs' refusal to provide

wholesale services in the manner, and at the prices, necessary to enable meaningful, broad-based competition. The three principal impediments to competition – all identified by LCI – are clear.

A. OSS Is Not Available in a Commercially Reasonable Manner

Operations Support Systems ("OSS") incorporate all of the systems, databases, information and process commonly used to support the ordering, provisioning, testing and maintenance of network elements and services.[4] The FCC "has consistently found that non-discriminatory access to the functions of operations support systems is integral to the ability of competing carriers to enter the local exchange market and compete with the incumbent LEC."[5] Indeed, the Commission recognized that without equivalent access to BOC OSS, "many items required by the [competitive] checklist, such as resale services, unbundled loops, unbundled local switching, and unbundled local transport, would not be practically available."[6] Competitors lacking adequate OSS "will be severely disadvantaged, if not precluded altogether, from fairly competing [in the provision of local telecommunications service]."[7]

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4 *Local Competition Order*, 11 FCC Rcd at 15767; *See* 47 C.F.R. §51.321(f).

5 *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, FCC 97-418 at ¶ 82 (Dec. 24,1997) (*BellSouth South Carolina Order*); *see Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, FCC 97-298 at ¶¶ 129-30 (Aug. 19, 1997) (*Ameritech Michigan Order*).

6 *Ameritech Michigan Order*, at ¶ 132.

7 *Local Competition Order*, 11 FCC Rcd at 15763-64.

Recognizing that nondiscriminatory access to OSS is "absolutely necessary," the FCC ordered the BOCs to establish equivalent OSS by January 1, 1997.[8] However, no BOC met this deadline, nor have any of them satisfied it even today – over 14 months after they were required to be in compliance. Four times, a BOC has requested in-region interLATA authority, claiming each time that its competitors had efficient and reliable OSS access. And four times, the FCC rejected these applications, finding in each that the BOC had not demonstrated that competitors' OSS access satisfied the Act's standards.[9] Even though the FCC focused primarily on OSS for the simplest services – resale of POTS lines – in these decisions, it concluded that the evidence did not support a finding that competitors received access to OSS at parity with that which the BOC provided to itself.[10] BOC systems were found to be plagued with inordinate delays, excessive manual processing, and unclear "business rules" and procedures.[11]

One fundamental problem with OSS is that, rather than giving CLECs the access to the BOC systems that its own personnel enjoy, the BOCs have established two separate systems – one for themselves and one for others. The OSS access provided to CLECs is cumbersome, slow, inefficient, and plagued by errors, inconsistencies and inadequate staffing. As a result, CLECs cannot order, provision and maintain even simple arrangements like resold POTS lines at parity with the BOC. But even if the BOCs' performance improved, the

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8 *Local Competition Order*, 11 FCC Rcd at 15764, 15766; *see* also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Second Order on Reconsideration, 11 FCC Rcd 19738, 19742-44 (1996).

9 Applications were filed for authority in Michigan, Oklahoma, South Carolina and Louisiana. *See, e.g., BellSouth South Carolina Order*, at ¶¶ 82-89.

10 *E.g., BellSouth South Carolina Order*, at ¶ 88.

11 *Id.* at ¶¶ 101-14.

Commission would continue to be faced with the difficult, exceedingly detailed task of comparing separate systems to detect what may be subtle forms of favoritism or discrimination.[12]

Due to widespread problems in every BOC region, OSS is not ready for any commercially reasonable provisioning of local services. Only a trickle of orders can be processed currently, and those require substantial manpower commitments from both the BOC and the CLEC to accomplish. Only when OSS access provides the ease and reliability of a PIC change will broad-based local competition be possible. Until then, the pace of competition will be slowed by the OSS bottleneck through which each customer must pass.

B. UNE Combinations Are Not Available

Congress explicitly recognized that new carriers will not be able to duplicate the LEC network at any time in the foreseeable future. Therefore, the Act provides,[13] the FCC found[14] and the Eighth Circuit agreed[15] that a requesting carrier is entitled to provide telecommunications services solely through the purchase of UNEs from a BOC, without use of any of the requesting carrier's own equipment or facilities. This fundamental right cannot be disputed or denied. Nor is there dispute that a requesting carrier may combine UNEs in any manner in order to provide any telecommunications service of its choosing.[16] Moreover, the Eighth Circuit made clear that a BOC must provide requesting carriers with nondiscriminatory

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12 To remedy some of these problems, CompTel joined with LCI last summer to urge the FCC to adopt explicit standards for OSS performance and reporting. CompTel reiterates its call for the Commission to move forward promptly with those standards.

13 47 U.S.C. § 251(c)(3).

14 *Local Competition Order* 11 FCC Rcd at 15666-71.

15 *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 814-15 (8th Cir. 1997).

16 47 U.S.C. § 251(c)(3).

access to its network, for purposes of combining UNEs.[17] These rulings undeniably affirm the right of CLECs to use combinations of UNEs in a platform configuration. The only issue is how those combinations will be made available.

Having succeeded (at least temporarily) in their refusal to provide UNEs in easy to use combinations,[18] the BOCs have followed with other blatant attempts to prevent the efficient use of UNEs in combination. Not only are BOCs refusing to combine elements for CLECs upon request, but they have reneged on binding agreements voluntarily reached in which they agreed to do precisely that.[19] Moreover, wherever possible, they have raised their competitors' costs to combine elements, by insisting on mandatory separation of existing UNE combinations in all instances where a customer selects service from a CLEC.[20] Furthermore, BOCs are imposing exorbitant and wholly unnecessary collocation requirements solely to connect UNEs that could be combined directly in the BOC network.[21]

The direct result, and intended effect, of these policies is to foreclose competitors from all but niche portions of the local exchange market. For example, in South Carolina, BellSouth's recurring UNE charges would be sufficient to render approximately 85 percent of

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17 *Iowa Utils. Bd.*, 120 F.3d at 813 (noting that ILECs apparently "would rather allow entrants access to their networks than have to rebundle the unbundled elements for them").

18 *Id.* CompTel believes that the 8th Circuit misinterpreted the Act in its opinion, and will participate in the upcoming review before the Supreme Court.. *See AT&T Corp. v. Iowa Utils. Bd.*, Case No. 97826, 118 S. Ct. 879 (1998) (order granting certiorari).

19 *See, e.g.,* Petition of AT&T Corp. to Require that Bell Atlantic-Maryland Continue to Offer "Combined" Network Elements Under Its Interconnection Agreement with AT&T and Under Maryland Law, MD PSC Case No. 8731, Phase II(c) (filed Nov. 18, 1997).

20 *See, e.g., BellSouth South Carolina Order*, at ¶¶ 186-94 (describing BellSouth position).

21 *Id.*, at ¶ 193.

the residential market in the state addressable by competitors using solely BellSouth UNEs.[22] However, because BellSouth insists on physically separating elements in this process (and charges for doing so), the price of BellSouth UNEs skyrockets to the point where as little as 8 percent of the residential market is addressable.[23] It is no wonder that competition is most prevalent today where competitors are best able to bypass the LEC network, and almost non-existent in residential and other markets where competitors must depend on UNEs to provide a competing service.

As Congress recognized, even the exceptional pace at which many CLECs are deploying fiber optic capacity cannot overcome these barriers, because new entrants cannot, as a practical matter, duplicate the ubiquitous ILEC network over night.[24] Indeed, despite hundreds of millions of dollars invested to build local networks, CLECs have barely begun to scratch the surface. For example, Chairman Kennard reported in a speech two weeks ago that the ten largest CLECs had deployed 132 switches, serving 33 cities nationwide.[25] By comparison, the BOCs

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22 *See* CompTel Opposition to BellSouth Application, Appendix A (Affidavit of Joseph Gillan), CC Docket No. 97-208 (Oct. 20, 1997). For these purposes, a customer is considered "potentially addressable" if the cost of purchasing UNEs is less than or equal to the customer's average monthly revenue for local services. In other words, if a carrier can at least "break even" on the UNE costs (excluding the carrier's own internal costs), the customer is considered potentially addressable.

23 *Id.*

24 *See, e.g., Ameritech Michigan Order*, at ¶ 12 (citing legislative history).

25 Remarks of William E. Kennard to Legg Mason "Telecom Investment Precursors" Workshop (Mar. 12, 1998) <www.fcc.gov/Speeches/Kennard/spwek808.html>.

operate nearly 10,000 local exchange switches and serve over 80 percent of the switched access lines in the U.S.[26] Not surprisingly, local competition remains in its infancy.[27]

C. UNEs Are Not Being Offered at Reasonable, Cost-Based Prices

Sections 251 and 252 of the Act require the BOCs to provide UNEs at cost and on a non-discriminatory basis.[28] These sections reflect Congress' recognition that the only effective way to encourage competition in the local exchange is to require ILECs to provide wholesale services at cost-based rates. Unfortunately, the Eighth Circuit's ruling in *Iowa Utilities Board v. FCC* has created significant uncertainty regarding the prices at which UNEs will be made available and has undermined efforts to introduce competition to local exchange markets.

The importance of cost-based prices cannot be overstated. As the Commission recognized in the *Ameritech Michigan Order*, cost-based rates are critical both to permit competition to develop using the BOCs' ubiquitous local exchange networks and to encourage

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26 *Statistics of Communications Common Carriers* 1995/96 Edition, at Table 2.10.

27 Notably, the lack of competition *among* RBOCs is perhaps the best testament that local markets are not open to competition. If markets were as open as the BOCs contend, we should expect to see examples of it, such as BellSouth moving to serve Richmond or Virginia Beach, Ameritech or PacBell initiating service in Arizona, or any one of several BOCs entering the New York City market. However, other than a few PR announcements of an intent to compete, there is no evidence that the BOCs are actually competing with each other anywhere.

28 47 U.S.C. § 252(d).

the efficient deployment and use of CLEC network facilities.[29] Because competitors must rely on the BOC network, the only way to ensure non-discrimination in BOC pricing is to insist that the prices are based upon the long run incremental costs of providing the elements in question, *i.e.*, that prices are based on TELRIC.

However, the BOCs have capitalized on the Eighth Circuit's ruling to create a jurisdictional hodge-podge of pricing regulations and rates. The result has been prices significantly higher than the BOCs' TELRIC. Moreover, as the Department of Justice noted, the increased uncertainty brought on by this hodgepodge has harmed the pace of local competition.[30] Unless and until the BOCs are required to apply a uniform pricing standard, and that standard reflects their long run incremental costs of providing network elements, consumers will suffer in the form of higher local service prices and fewer choices.

III. LCI CORRECTLY IDENTIFIES THE CORE PROBLEM CONFRONTING FEDERAL AND STATE REGULATORS

As LCI notes, the common element of these three barriers to competition is the BOC's dual position as both a competitor and reluctant supplier. As a result of its combination of both a ubiquitous wholesale network and a near 100 percent retail local exchange market share, the BOC faces an inherent conflict of interest. As a wholesale operator of an essential facility, the BOC's duty is to provide network elements and services to all carriers seeking to offer local exchange service. However, if it does so, it will assist competitors in capturing local exchange market share from its retail operations, thereby reducing the overall profits the BOC

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29 *Ameritech Michigan Order*, at ¶ 289.

30 DOJ South Carolina Evaluation at 40-41, CC Docket No. 97-208 (Nov. 5, 1997).

earns. Thus, as long as the BOC is vertically integrated, its incentive to provide wholesale services to new entrants will be undermined – if not negated entirely – by its desire to retain retail market share.

The RBOCs' actions since passage of the 1996 Act reflect this inherent conflict. Despite the effusive praise of the BOCs' press releases in February 1996,[31] the BOCs have been working tirelessly at undermining Section 251. Ameritech and other BOCs refused to comply with the FCC's *Local Competition Order*, openly ignoring FCC orders to provide common transport and resale discounts for customer-specific contractual arrangements.[32] In a rush to test the FCC's resolve on Section 271 issues, the BOCs filed patently premature applications in four states, all of which were rightfully rejected by the Commission. At the same time, they have waged seemingly endless attacks on the FCC's jurisdiction, the Act's clear words, and the underlying constitutionality of the very relief they so vigorously advocated.[33] Most recently, the BOCs have launched "end run" attacks on the interconnection and unbundling restrictions as they apply to forward-looking local network technologies.[34] Clearly, these are not the actions one would expect from a company fully embracing its role as a wholesale supplier to other carriers.

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31 *See, e.g.,* "Ameritech Applauds Passage of Sweeping Telecom Legislation," Feb. 1, 1996 (statement of Richard C. Notebaert, Chairman and CEO) <www.ameritech.com/news/releases/feb-1996/telecom.html> (Act "offers a comprehensive communications policy, solidly grounded on the principles of the competitive marketplace").

32 *Ameritech Michigan Order*, at ¶316-18 (shared transport); *BellSouth South Carolina Order*, at ¶¶ 215-24 (resale of customer-specific arrangements).

33 *See Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997); *SBC v. FCC*, Civ. No. 7:97-CV-163-X (N.D. Texas Dec. 31, 1997).

34 *See, e.g.,* Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11 (Jan. 26, 1998).

For local competition to develop, federal and state regulators must overcome the BOCs' inherent conflict of interest. LCI has offered one approach to overcome this barrier, and that proposal deserves significant further consideration. But other approaches also are available, including continued adherence to Section 271's strict standards, even in the face of additional deficient applications by the BOCs. Importantly, the paths to overcoming BOC conflicts of interest are not mutually exclusive. The FCC can work together with the industry to develop and implement the LCI Fast Track alternative as soon as possible, while also continuing to evaluate BOC applications under current Section 271 standards and procedures. CompTel urges the Commission to recognize the legitimate problems identified in the LCI Petition and to implement policies to resolve them promptly so that local competition may develop for all consumers.

IV. THE COMMISSION SHOULD EXAMINE LCI'S PROPOSAL IN COOPERATION WITH THE INDUSTRY TO DEVELOP A FAST TRACK ALTERNATIVE THAT CAN BE IMPLEMENTED QUICKLY AND EFFECTIVELY

As it is described in the LCI Petition, the Fast Track alternative appears to have tremendous potential.

First, because the Fast Track alternative is voluntary, it avoids any uncertainties or delay attendant to mandatory structural separation. The BOCs' propensity to litigate even those obligations that they affirmatively supported is well established. Thus, were the Commission to impose the NetCo/ServeCo structure on a BOC, the issue of the FCC's authority to do so likely would be tied up in the courts for several years. By contrast, if a BOC chooses to adopt the alternative, the regulatory response can be quick and the benefits certain.

Second, the proposal attempts to address a BOC's conflict of interest directly, through structural reform of the BOCs' wholesale and retail operations. LCI's proposal is

premised on the successful implementation of seven minimum and interrelated safeguards to overcome the inherent conflict of interest. CompTel agrees that at least these seven requirements must be implemented fully for the proposal to work. Critically, detailed rules and policies must be developed to carry out the principles LCI identifies. CompTel offers its support in resolving those issues, but is concerned with ensuring that their resolution does not undermine the proposal's chances for success. Meaningful reforms that address BOC incentives can promote competition. Cosmetic changes that hide those incentives will not.

Third, the prospect that of the emergence of a "carriers' carrier," could produce significant benefits for the rapid development of broad-based competition to rural and residential markets. A wholesale-only carrier will have an incentive to provide service to all carriers, not just the BOC retail affiliate, in order to maximize revenues through the use of its network. Accordingly, such a carrier would have an incentive to ensure that its services can be ordered and provisioned quickly and easily, and can be expected to develop systems that work and are responsive to its customers' needs. In addition, a wholesale-only carrier would have an incentive to make creative combinations of its UNEs available, because this will increase the usage of its network. These changes, in turn, would lower the costs to entrants seeking to provide services and will help to make residential competition feasible in the near future.

Importantly, nothing in a Fast Track alternative will adversely affect the pro-competitive policies already adopted by the FCC and states. An independent wholesale "carriers' carrier" should have the proper incentives and ability to protect the safety or integrity of the public switched network by continuing to maintain 911 and other public safety response services at their current high levels. The wholesale provider also should have an incentive to maintain and improve its network, in order to continue to attract customers and to respond to

alternatives available from other facilities-based providers. Moreover, the proposal will not impose any increased pressures on local service rates. To the contrary, increased retail competition should produce pressure to lower rates and add value to existing services, all of which redound to the benefit of consumers.[35]

Therefore, CompTel supports further development and examination of the LCI Fast Track alternative. LCI has identified seven principles which it believes are essential to overcoming the BOCs' inherent conflicts of interest in the provisioning of wholesale and retail services. The FCC should work in cooperation with the industry to develop these seven principles into concrete rules and policies. Once this is done, the FCC and the industry will be in a much better position to determine whether the seven principles are sufficient to eliminate the conflict of interest, and thereby speed the path to local competition. Once appropriate safeguards are in place, the FCC should immediately make a Fast Track alternative available to those BOCs willing to voluntarily separate their wholesale and retail operations into separate and independent entities. In the meantime, the FCC should continue to vigorously enforce Section 271's standards to ensure that local competition precedes BOC authorization to provide in-region interLATA services.

V. CONCLUSION

The Section 251/271 process is not working as the drafters of the Act contemplated. Immediate action by the FCC is needed to put local competition back on track,

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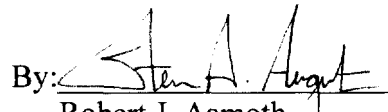
[35] In addition, a Fast Track alternative can be implemented consistent with the FCC's access reform and universal service policies. Nothing in the creation of a separate wholesale-only carrier should adversely affect the Commission's ability to reduce access prices to cost and to ensure the availability of universal service throughout the nation.

and to overcome the incentives inherent in the RBOCs' current vertically integrated structures. The LCI Petition correctly identifies this conflict of interest as the cause of the present barriers to broad-based local competition, and proposes a voluntary structure that might help to achieve the FCC's goals. LCI's proposal shows significant promise as one of the methods available to the Commission to break the stalemate in local exchange markets today. Accordingly, the Commission should work cooperatively with the industry to quickly develop the LCI Fast Track proposal to ensure it effectively addresses the conflict of interest inherent in the BOCs' current operations. Once successfully developed, the Commission should make that option available on a voluntary basis, as an alternative way to demonstrate compliance with Section 271's competitive checklist. However, whether a BOC proceeds under a Fast Track alternative or under existing Section 271 procedures, the FCC must remain steadfast in its requirement that the BOC networks be fully and irreversibly open to competition *before* a BOC is authorized to provide in-region interLATA services. LCI does not propose to alter the statutory requirements, and the FCC must be vigilant in applying those standards if broad-based local competition is to develop.

Respectfully submitted,

THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION

By: 

Robert J. Aamoth
Steven A. Augustino
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, D.C. 20036
(202)-955-9600

Its Attorneys

Genevieve Morelli
Executive V.P. and General Counsel
THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION
1900 M Street, N.W., Suite 800
Washington, D.C. 20036
(202) 296-6650

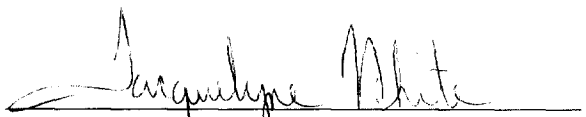
March 23, 1998
DC01/AUGUS/26342.1

CERTIFICATE OF SERVICE

I, Jacquelyne White, hereby certify that on this 23rd day of March 1998, I caused copies of the foregoing **"COMMENTS"** to be served via hand delivery upon those listed below.

Janice M. Myles
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W., Room 544
Washington, D.C. 20554

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036



Jacquelyne White